

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

JAMES RAY CRISS,

Petitioner,

v.

NATHANIEL QUARTERMAN, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,

Respondent.

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2:06-CV-0254

**REPORT AND RECOMMENDATION TO DISMISS  
PETITION FOR A WRIT OF HABEAS CORPUS WITHOUT PREJUDICE**

Petitioner JAMES RAY CRISS has filed with this Court a Petition for a Writ of Habeas Corpus by a Person in State Custody. By his application, petitioner challenges his July 28, 2006 convictions, and the resulting 12-year sentences, for the offenses of sexual assault of a child and indecency with a child, multiple counts. *See State v. Criss*, No. 18,040-A.

On September 27, 2006, the undersigned ordered petitioner to show cause why this case should not be dismissed for failure to exhaust all available state remedies. On October 13, 2006, petitioner filed a response to the Order to Show Cause wherein he requests “that an Order be made to dismiss the Petition for Writ of Habeas Corpus without prejudice to allow him to exhaust all the state remedies.”

**RECOMMENDATION**

It is the recommendation of the undersigned United States Magistrate Judge to the United


States District Judge that the Petition for a Writ of Habeas Corpus filed by petitioner JAMES RAY CRISS be DISMISSED without prejudice. Petitioner is warned that a dismissal without prejudice does not necessarily prevent any procedural bar or time bar from being applied to any subsequent federal habeas application filed by petitioner. Therefore, petitioner is placed on notice that a dismissal “without prejudice” may very well have the practical consequences of a dismissal with prejudice.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 1st day of December 2006.



CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(B), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(D). When service is made by mail or electronic means, three (3) days are added after the prescribed period. Fed. R. Civ. P. 6(e). Therefore, any objections must be **filed on or before the fourteenth (14<sup>th</sup>) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).